FILED
JUN 9 1973
MICHAEL RODAK, JR., CLERK

No. 72-1416

In the Supreme Court of the United States

OCTOBER TERM, 1972

LYDIA AGUAYO, ET AL., PETITIONERS

v.

ELLIOT L. RICHARDSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court (Pet. App. 1a) is reported at 352 F. Supp. 462. The opinion of the court of appeals (Pet. App. 19a) is reported at 473 F. 2d 1090.

JURISDICTION

The judgment of the court of appeals was entered on January 18, 1973. The petition for a writ of certiorari was filed on April 18, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Secretary of Health, Education, and Welfare properly construed Section 1115 of the Social

Security Act, which permits him to approve "any experimental, pilot, or demonstration project" which in his judgment "is likely to assist in promoting the objectives" of welfare programs, as authorizing experimental state programs under which welfare recipients are required to work in order to obtain benefits.

2. Whether a State denies welfare recipients equal protection by requiring only certain of them to participate in those programs.

STATUTE INVOLVED

Section 1115 of the Social Security Act, 42 U.S.C. 1315, provides:

> In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, or XIX of this chapter, or part A of subchapter IV of this chapter, in a State or States—
>
> (a) the Secretary may waive compliance with any of the requirements of section 302, 602, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and
>
> (b) costs of such project which would not otherwise be included as expenditures under section 303, 603, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under

> the State plan or plans approved under such subchapter, or for administration of such plan or plans, as may be appropriate.
>
> In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

STATEMENT

This is an action to enjoin the State of New York from conducting two experimental work projects for persons receiving welfare assistance under the Aid to Families with Dependent Children ("AFDC") program, and to set aside the approval of the projects by the Secretary of Health, Education and Welfare ("HEW"). The two projects involved—Public Service Work Opportunities Project ("PSWOP") and Incentives for Independence ("IFI")—are "demonstration" work projects which require AFDC recipients who are able to work to accept proferred job opportunities. Both programs are designed to decrease the costs of public assistance and to increase the initiative of welfare recipients by offering public service job opportunities to persons on welfare. Both projects require that participants accept a tendered job offer or sustain a loss or reduction of their benefits, unless the individual is not "employable" within the

project guidelines—*e.g.*, when adequate child care is unavailable.[1]

Since these projects had not previously been tested by the State in actual practice, they were adopted on an "experimental" basis and instituted only in certain areas. PSWOP districts—comprising 25 percent of the State's welfare recipients—are distributed among upstate urban areas, metropolitan localities, and rural counties. IFI, consisting of 2.5 percent of welfare recipients, are to be conducted in urban, suburban and rural areas (Pet. App. 23a, 25a). Both demonstration projects are of limited duration—PSWOP for three years, and IFI for one year (Pet. App. 40a, n. 21).

In September 1971, New York requested the Secretary of Health, Education, and Welfare to approve the projects pursuant to Section 1115 of the Social Security Act, 42 U.S.C. 1315. Under that statute, the Secretary may provide states with financial assistance in "the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of" the AFDC program of the Social Security Act. After the State supplied additional data regarding the proposed administration of

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[1] The major difference between the projects is that PSWOP participants do not work full-time, but may only be employed for a period sufficient to earn an amount equal to their welfare benefits. IFI participants, on the other hand, work full-time, and may receive wages in excess of their benefits. IFI also contains a separate component for work motivation for school youth. Under this program, the children of families receiving AFDC relief who are over fifteen years of age are required to participate in community work projects for six hours semi-monthly during the school year. The benefits of the family of a noncomplying child are not reduced if the parent has made efforts to obtain the child's cooperation (Pet. App. 24a-27a).

the projects, the Secretary approved them, but for only one year with renewals contingent upon satisfactory implementation of the program (Pet. App. 28a-30a, 40a, n. 1).

The district court denied a preliminary injunction, and the court of appeals affirmed, holding that the Secretary had a rational basis for determining that the programs were "likely to assist in promoting the objectives" by decreasing costs of public assistance and of increasing the self support, initiative and self respect of recipients (Pet. App. 44a-45a). Chief Judge Friendly went further to state that the mere ascertainment of whether appellants' claim—that there were so few employables and employment opportunities that the programs could not prove anything is true—would itself be a legitimate objective (Pet. App. 47a).

As to the claim that the different treatment of the 25% chosen for the two experimental projects violates the Equal Protection Clause of the Fourteenth Amendment, Judge Friendly said, "[t]he Equal Protection clause should not be held to prevent a state from conducting an experiment designed for the good of all, including the participants, on less than a statewide basis" (Pet. App. 53a).

ARGUMENT

1. Petitioners contend that the Secretary has no authority under Section 1115 of the Social Security Act to approve experimental programs under which welfare beneficiaries are required to work in order to obtain benefits. The broad language of the Section, however, contains no such limitation. It authorizes him to approve "any experimental, pilot, or demonstration project which, in [his] judgment * * * is likely to assist in promoting

the objectives of" the AFDC program. The Secretary acted within his authority in concluding that an experimental program designed to evaluate the effect of requiring welfare recipients to work in order to obtain benefits would further that objective.

Approval of these experimental programs comports with the congressional concern that employable welfare recipients be encouraged to work. As the court of appeals stated (Pet. App. 42a), the legislative history of the AFDC program is "full of references to the concept that the ideal was a situation in which the family 'breadwinner' would win the needed bread and that public assistance was a solution" only when there was no breadwinner. See *King* v. *Smith,* 392 U.S. 309. Furthermore, one of the stated objectives of the AFDC program is to "help * * * parents or relatives to attain or retain capability for the maximum self-support" (42 U.S.C. 601). The demonstration projects here assist welfare recipients in attaining that objective.[2]

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[2] Petitioners contend that the recent repeal by Congress of a work relief program (42 U.S.C. 609) evidences a congressional departure from its concern that employable welfare recipients be encouraged to work. As the court of appeals noted, however, the program Congress repealed was supplanted by the statutory work relief program WIN (Work Incentive Program, 42 U.S.C. 630-644), thus demonstrating that Congress maintains a continuing interest in requiring work by welfare recipients. There is also no foundation to petitioners' claim that Section 1115 does not permit demonstration programs which deprive welfare recipients of rights accorded under Section 402 of the Act (42 U.S.C. 602)—which includes a provision that aid be furnished to "all eligible individuals" in the state. Both courts correctly held that the exhaustive waiver provisions of Section 1115 permits the Secretary to waive all of the requirements of Section 402, and that the Secretary's approval of the projects in issue here constituted such a waiver.

2. Petitioners further argue that the Secretary's approval of the projects did not satisfy the standards for administrative action announced in *Citizens to Preserve Overton Park* v. *Volpe,* 401 U.S. 402. As the court of appeals held, however, "the materials before the Secretary sufficed for 'a consideration of the relevant factors' by him and * * * there was no 'clear error of judgment' on his part. *Overton Park, supra,* 401 U.S. at 416" (Pet. App. 47a). The court of appeals, noting that Section 1115 does not prescribe specific factors to be considered in approving experimental or demonstration projects, properly held that the Secretary had exercised the informed judgment required by the statute in evaluating the extensive policy, budgetary and logistical material furnished by the State in connection with the proposed projects. The court also pointed out that the projects were of limited duration and would be under the continuous supervision of HEW, thus enabling the Secretary to terminate approval if the implementation of the projects was unsatisfactory. The court of appeals correctly concluded that the Secretary properly approved the projects (*ibid.*).

3. Petitioners also contend that the State, in providing that the demonstration projects are to cover only some of its welfare recipients, violated the Equal Protection Clause of the Constitution. That claim, however, is foreclosed by *Dandridge* v. *Williams,* 397 U.S. 471, and *Jefferson* v. *Hackney,* 406 U.S. 535. In those decisions, this Court held that an otherwise reasonable state classification in social welfare matters does not offend the Equal Protection Clause because it results in some inequality; it is valid if it has some "reasonable basis." *Dandridge* v. *Williams, supra,* at 485; *Jefferson* v. *Hackney, supra.* As the court of appeals explained (Pet. App. 53a), the disparity in treatment here is reasonable

> A purpose to determine whether and how improvements can be made in the welfare system is as "legitimate" or "appropriate" as anything can be. * * * the Equal Protection clause should not be held to prevent a state from conducting an experiment designed for the good of all, including the participants, on less than a statewide basis. * * * The Equal Protection clause does not place a state in a vise where its only choices in dealing with the problems of welfare are to do nothing or plunge into statewide action.

Contrary to petitioners' contention, the state did not arbitrarily select the welfare districts in which to conduct the projects. Both courts found that the districts were chosen on a rational basis, in order to provide an adequate sampling of welfare recipients from urban, suburban, and rural areas.[3]

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[3] Petitioners point out that another case involving compulsory work rules established by New York is now pending before this Court in *New York State Department of Social Services, et al.* v. *Dublino* (Nos. 72-792, 72-802). The question in *Dublino* is whether New York may validly impose employment rules in addition to those prescribed by the federal work relief program, WIN, 42 U.S.C. 630-644. However, the issues in this case in no way depend upon this Court's disposition of *Dublino*. As petitioners concede (Pet. 37), the Secretary is authorized under Section 1115 to waive compliance with the WIN program in the case of demonstration projects. While it is the Secretary's position that a waiver was unnecessary here, the court of appeals held that the Secretary had waived compliance with WIN by approving the demonstration projects in issue here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1973.

DOJ-1973-06